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SUPPLEMENTAL REPORT

OF THE

Commissioners for the Revision

AND

Reform of the Law

1901

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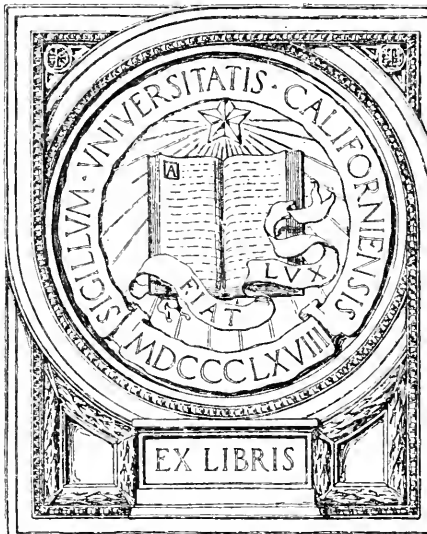

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SUPPLEMENTAL REPORT

OF THE

Commissioners for the Revision and Reform of the Law.

A. C. FREEMAN, W. C. VAN FLEET, GEORGE J. DENIS,
COMMISSIONERS.

W. F. HENNING, - - SECRETARY.

SACRAMENTO:
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1901.

SUPPLEMENTAL REPORT

OF THE

COMMISSIONERS FOR THE REVISION AND REFORM OF THE LAW.

The Commissioners for the Revision and Reform of the Law respectfully report that in the months of October and November, 1900, they caused to be printed and generally circulated throughout the State, but more especially among members of the bar and county and other public officers, the three reports heretofore filed by them suggesting amendments and other changes to the Code of Civil Procedure and in the Civil and Penal Codes respectively, and that in response thereto they received many suggestions from members of the bar and others concerning amendments and other changes which it was thought ought to be presented to the Legislature, and, having considered such suggestions, these Commissioners beg leave to propose the following amendments of, and additions to, their reports so heretofore filed:

CODE OF CIVIL PROCEDURE.

SECTION 103. That section one hundred and three be further amended by inserting after the word "class" in line 29 of page 17 the words "or of any township composed in whole or in part of either."

The object of the amendment is to make the section equally applicable to all municipalities of the classes mentioned therein, whether composed in whole or in part of townships or not.

SECTION 674. That section six hundred and seventy-four be amended to read:

Section 674. The transcript of the original docket of any judgment, the enforcement of which has not been stayed on appeal, certified by the clerk, may be filed with the recorder of any other county, and from such filing the judgment becomes a lien upon all the real property of the judgment debtor not exempt from execution in such county, owned by him at the time, or which he may afterward and before the lien expires acquire. The lien continues for five years from the entry of judgment, unless it is previously satisfied or the lien otherwise discharged.

The amendment restricts the right to file transcripts of judgments t those cases in which the right to execution has not been suspende by appeal, and extends the lien from two to five years, thus harmo nizing the section with section six hundred and seventy-one.

SECTION 690. That section six hundred and ninety be further amend ed by inserting after the word "is" in line one thereof the words "i favor of natural persons only."

It is believed that the spirit of the exemption law does not apply t corporations, and that this additional amendment may have bee made necessary by our proposal exempting the proceeds of policies o life insurance in favor of all beneficiaries thereof.

SECTION 832. That there be inserted in subdivision seven of sectio eight hundred and thirty-two, after the word "contract," the words "i writing."

It has been suggested to us that, in many instances, persons hav been subjected to suits brought against them in counties far remote fro that of their residence, under the pretense that the obligation had bee incurred in the latter county, and that the remedy of this evil coul best be accomplished by requiring that the contract relied upon t give a court of a county other than that of the defendant's residenc jurisdiction of him be expressed in writing.

SECTION 848. That section eight hundred and forty-eight be amend ed by striking from line twelve the words "where he resides," and in serting in lieu thereof the words "wherein he may be found."

It is suggested that while a defendant may reside in a particula county, it may be impossible to find him there within a reasonabl time, and hence when the action has been properly brought against hin service of summons on him ought to be authorized wherever he may b found.

SECTION 867. That section eight hundred and sixty-seven be furthe amended by striking from line ten the words "service of the summons, and inserting in place thereof, the words "notice of the levy."

It often happens that the service of the summons does not take plac until long after the levy of the attachment, but it is believed that if th defendant has notice of such levy, he ought, nevertheless, to promptl exercise his right of excepting to the sufficiency of the sureties, and failing to do this, that such exception should be deemed waived.

SECTION 937. That section nine hundred and thirty-seven be furthe amended by inserting after the word "order" in line seven the word "or judgment."

This amendment needs no explanation, as it simply supplies an obvious omission in the present section as found in the code.

SECTION 1269. That section twelve hundred and sixty-nine be amended so as to read:

Section 1269. When the attorney-general is informed that any estate has escheated to this state, he must file an information in behalf of the state, in the superior court of the county in which said estate, or any part thereof, is situate, setting forth a description of the estate, the name of the person last possessed thereof, and of the person claiming the estate, if known, and the facts and circumstances in consequence of which the estate is claimed to have escheated, with an allegation that by reason thereof the State of California has right, by law, to such estate. Upon such information a summons must issue to said claimant and possessor, requiring them to appear and answer the information within the time allowed by law in civil actions, and the court must make an order setting forth briefly the contents of the information, and requiring all persons interested in the estate to appear and show cause, if any they have, within forty days from the date of the order, why such estate should not vest in this state, which order must, prior to the expiration of such time, be published for at least one month in a newspaper published in the county, if one is published therein, and in case no newspaper is published in the county, in some other newspaper in this state.

The object of the amendment is to extend the operation of the section to personal property.

SECTION 1270. That section twelve hundred and seventy be amended to read:

Section 1270. The court, upon the information being filed, and upon application of the attorney-general, either before or after answer, upon notice to the party claiming the estate, if known, may, upon sufficient cause therefor being shown, appoint a receiver to take charge of such estate, or any part thereof, and to receive the rents, income, and profits of the same, until the title of such estate is finally settled.

The amendment makes it clear that the receiver to be appointed may take charge of the property, as well as receive the rents and profits thereof.

SECTION 1271. That section twelve hundred and seventy-one be further amended—

1. By striking out "may" in line two;

2. By striking out "in the information, the title of the state to lan and tenements therein mentioned" in lines three and four;

3. In line eight by inserting "such" after "no";

4. By striking out "be seized of the lands and tenements" in lir nine and ten, and inserting in lieu thereof "is the owner of t property";

5. By striking out "land and tenements" in lines fifteen and sixte and inserting "property";

6. By striking out "seized" in line seventeen and inserting "t owner and entitled to the possession";

7. By inserting after "defendants" in line eighteen "who ha appeared and answered";

8. By striking out "real" in line twenty-two and inserting af "property" in the same line "unless it consists of money";

9. By striking out the words "at least ten per cent" in line thir one; "of ten per cent" in line thirty-five; "of at least ten per cent" line forty-two.

The amendments thus proposed extend the operation of the s tion to personal property; exonerate defendants from payment of co unless they have appeared and answered; and permit the court its discretion to set aside the sale upon receiving a greater offer for t property, though not ten per cent more than the sum offered at the sa

SECTIONS 1693, 1696. That sections sixteen hundred and ninety-th and sixteen hundred and ninety-six be amended to read:

Section 1693. When personal property remains in the hands of an agent unclaimed for a year, and it appears to the court that it is for the benefit of those interested, it must be sold under the order of the court, and the proceeds, after deducting the expenses of the sale allowed by the court, must be paid into the county treasury. When the payment is made, the agent must take from the treasurer duplicate receipts, one o which he must file in the office of the auditor, and the other in court.

Section 1696. When any person appears and claims the money paid into the treasury, the court making the distribu tion must inquire into such claim, and being first satisfied o his right thereto, must grant him a certificate to that effect under its seal, and upon the presentation of the certificate to him, the auditor must draw his warrant on the treasurer for the amount.

These amendments permit the proceeds of unclaimed property to paid into the county instead of the state treasury. Considerable inco venience has arisen to claimants of such property from their bei

required either to go, or send an agent, to the state capitol; and it is believed that the convenience of such claimants will be promoted by permitting the moneys to be paid into the treasury of the county wherein the estate was administered.

SECTION 1793. That section seventeen hundred and ninety-three be further amended—

1. By striking from line one the words "of each county";

2. By inserting before the word "estate" in line three "person and," and after the same word in the same line the words "or either";

3. By inserting after "county" in line five "or who, though not having such estate, is within the county."

These amendments make it clear that the court may appoint a guardian of the person of a non-resident minor, insane or other incompetent person if he is within the county.

SECTION 2006. That section twenty hundred and six be further amended by inserting after the word "desired" in line eight the words "by writing or causing his corrections to be written at the bottom of the deposition."

The amendment cures an ambiguity respecting the mode in which a deposition may be corrected.

CIVIL CODE.

SECTION 137. That section one hundred and thirty-seven be further amended by inserting in line five after the word "deserts" the words "or abandons," and also after the word "wife" the words "or when entitled to a divorce from him for any cause."

These additional amendments entitle a wife in every instance when abandoned or entitled to a divorce to maintain an action against her husband for the permanent support and maintenance of herself and children, without seeking a divorce.

SECTION 246. Section two hundred and forty-six is further amended by inserting after line twenty the words "4. To a relative."

Such words having been inadvertently omitted from our report.

SECTION 268. That section two hundred and sixty-eight be amended by striking out lines fifteen, sixteen, seventeen, and eighteen, and in lieu thereof inserting "or her fifty dollars in gold, and two whole new suits of clothes to be worth in the aggregate at least sixty dollars gold."

This change is to remove an ambiguity respecting the aggreg value of the clothes to be furnished by the master to an apprentice up the termination of the latter's minority.

SECTION 360. That section three hundred and sixty be furth amended by striking out "lot" in line ten and inserting "land."

To avoid the contention that the realty which a corporation m acquire and hold for the purpose of carrying on its business may n consist of parts of two different lots.

SECTION 415. That section four hundred and fifteen be amended striking out in lines five and six the words "not exceeding in val one hundred and fifty thousand dollars."

The omission of these words will permit insurance corporations own such real property as is requisite for their accommodation a convenience in the transaction of their business without limitation to value.

SECTION 421. That section four hundred and twenty-one be furth amended so as to read:

Section 421. Corporations organized under the laws of this state, for the transaction of business in any kind of insurance, may invest their capital and accumulations in the following named securities:

1. In the purchase of, or loans upon, interest-bearing bonds of the United States government;

2. In the purchase of, or loans upon, interest-bearing bonds of any of the states of the United States, not in default for interest on such bonds;

3. In the purchase of, or loans upon, interest-bearing bonds of any of the counties or incorporated cities or towns of any state or territory of the United States, not in default for interest on such bonds;

4. In loans upon unincumbered real property, worth at least one hundred per cent more than the amount loaned; or upon merchandise or cereals in warehouse, but in no instance must such loan be made in excess of seventy-five per cent of the security taken;

5. In the purchase of, or loans upon, the stock of corporations, other than mining, which have at the time of the investment a market value of not less than sixty per cent of their par value, and are rated as first-class securities; but every such purchase and loan must be approved by the vote of two thirds of the directors; and no loan must exceed fifty per cent of such market value;

6. Such corporations may, after the investment of two hundred thousand dollars in the manner provided in subdivisions one, two, three, four and five of this section, invest the balance of their capital and any accumulations in the purchase of, or loans upon, interest-bearing first mortgage bonds of any corporations, other than mining, organized and carrying on business under the laws of the United States, or of any state or territory thereof, or of the District of Columbia, not in default for interest on such bonds; *provided*, that a two-thirds vote of all the directors of such corporations approves such investment. It is the duty of the officers of such corporations to report quarterly on the first days of January, April, July, and October of each year, to the insurance commissioner, a list of such investments so made by them; and the insurance commissioner may, if such investments, or any of them, seem injudicious, require the sale of the same.

No investment in the securities named in subdivisions one, two, three, five, and six of this section, must be made in an amount exceeding the market value of such securities at the date of such investment;

7. Corporations engaged in the business of insuring titles to real estate may, after the investment of one hundred thousand dollars in the manner provided in subdivisions one, two, three, four, five, and six of this section, invest an amount not exceeding fifty per cent of their capital stock in the preparation or purchase of the materials or plant necessary to enable them to engage in such business; and such materials, or plant, must be deemed an asset, valued at the actual cost thereof, in all statements and proceedings required by law for the ascertainment and determination of the condition of such corporations.

The additional amendments confer upon insurance corporations authority to loan money upon interest-bearing bonds of any incorporated city or town within the United States not in default for the payment of interest on such bonds.

SECTION 437. That section four hundred and thirty-seven be amended to read:

Section 437. Every corporation formed for the purpose of mutual insurance on the lives or health of persons, or against accidents to persons for life or any fixed period of time, or to purchase and sell annuities, must have a capital stock of not less than one hundred thousand dollars. It must not make any insurance upon any risk or transact any other business as a corporation until its capital stock is fully paid up in cash, nor

until it has also obtained a fund, to be known as a "guarantee fund," of not less than two hundred and fifty thousand dollars, as is hereinafter provided; or, if it has no capital, until it has an ascertained surplus above all liabilities of at least three hundred and fifty thousand dollars. If more than the requisite amount is subscribed, the stock must be distributed pro rata among the subscribers. Any subscription may be rejected by the board of directors or the committee thereof, either as to the whole or any part thereof, and must be, so far as rejected, without effect.

The amendment consists in the insertion of the words "or if it ha no capital, until it has an ascertained surplus above all liabilities of a least three hundred and fifty thousand dollars."

SECTION 447. That section four hundred and forty-seven read:

Section 447. Every life insurance corporation organized under the laws of this state must, on or before the first day of February of each year, furnish the insurance commissioner the necessary data for determining the valuation of all its policies outstanding on the thirty-first day of December then next preceding. And every life insurance company organized under the laws of any other state or country, and doing business in this state, must, upon the written requisition of the commissioner, whenever the latter is authorized to make a valuation of policies, as provided in section four hundred and forty-nine, furnish him, at such time as he may designate, but not oftener than once in each year, the requisite data for determining the valuation of all its policies then outstanding. Such valuations must be based upon the rate of mortality established by the American experience life-table and interest at four per cent per annum; *provided*, that from and after the thirty-first day of December, A. D. one thousand eight hundred and ninety-one, such valuations must be based on the rate of mortality established by the combined experience or actuaries' table of mortality, with interest at the rate of four per cent per annum. When the laws of any other state or territory require of a life insurance company organized under the laws of this state a valuation of its outstanding policies by any standard of valuation different from that named in this section, the insurance commissioner is hereby authorized to make such valuation for use in such other state or territory, and to issue his certificate in accordance therewith. For the purpose of making the valuations, the insurance commissioner is author-

ized to employ a competent actuary, whose compensation for such valuations shall be one cent for each thousand dollars of insurance, to be paid by the respective companies whose policies are thus valued.

The amendments insert the words "whenever the latter is authorized to make a valuation of policies as provided in section four hundred and forty-nine." Also, "but not oftener than once in each year"; and substitutes "one cent" for "three cents" as the compensation for the valuation of each thousand dollars of insurance.

SECTION 653*d*. Section six hundred and fifty-three *d* is amended by striking out all the words after "office" in line fifteen and inserting in place thereof the words "of the clerk of the county wherein the principal business of the association is to be transacted, and a copy thereof certified by such clerk, with the secretary of state, who must thereupon issue his certificate in the form, and having the effect, prescribed in section two hundred and ninety-six."

SECTION 637. Section six hundred and thirty-seven is further amended by omitting from lines two and three the words "and such sums as may be borrowed by the corporation for the purpose."

The omission of these words conforms this section to the suggestion that section six hundred and forty-one be repealed.

PENAL CODE.

SECTION 272. That section two hundred and seventy-two be amended by striking out "sixteen" in line three and inserting "fourteen," and by inserting after the word "pretense" in line six the words "for or in any business, exhibition, or vocation injurious to the health or dangerous to the life or limb of such child"; and by striking out the same words in lines thirteen and fourteen.

The amendment, by taking the clause from lines thirteen and fourteen and inserting it in line six, cures what is claimed to be an ambiguity in the section. The other amendment is self-explanatory.

SECTION 397*b*. Section three hundred and ninety-seven *b* is amended by striking out the words "one hundred" from line nine and inserting the word "ten" in place thereof.

It is represented to the commission that the present section, by making the minimum fine one hundred dollars, prevents any considerable number of convictions from being made under the act, and that it

will be more effective if the court is permitted a wider discretion i limiting the amount of the fine.

SECTION 598*a*. That section five hundred and ninety-eight *a* b amended by striking out the word "wilfully" in line two, to confor the section to the statute codified.

SECTION 599*a*. That section five hundred and ninety-nine *a* b amended by striking out the word "showing" in line two, and the word "that the complainant believes" inserted in lieu thereof.

SECTION 969. Section nine hundred and sixty-nine is amended b inserting after "indictment" in line six the words "or information."

The foregoing additional, or supplemental, amendments have all bee incorporated in the bills heretofore introduced in the two houses of th Legislature and which are now before it for consideration.

Reference by page, section, or line, when not otherwise stated, are t the published reports of this Commission, already on file with the Sec retary of State.

SACRAMENTO, January 16, 1901.

A. C. FREEMAN,
W. C. VAN FLEET,
GEORGE J. DENIS,
Commissioners for the Revision and Reform of the Law.

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